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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,790	07/14/2003	Richard J. Dibbs	DST-10503/15	7314
25006	7590	07/17/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021				WEIER, ANTHONY J
ART UNIT		PAPER NUMBER		
		1761		

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/618,790	DIBBS, RICHARD J.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 18 April 2006.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-37, 62-73 and 86-97 is/are pending in the application.
- 4a) Of the above claim(s) 86-97 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-37 and 62-73 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 86-97 are directed to an invention (method) that is independent or distinct from the invention originally claimed (apparatus) for the following reasons:

The groups are distinct as the apparatus (contrary to the method) may be used to pasteurize other food items such as vegetables. The method and apparatus claims have acquired a separate status in the art due to their different classification (i.e. the apparatus claims in class 219, subclass 513 and the new method claims in class 426, subclass 614).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 86-97 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### **Claim Rejections - 35 USC § 112**

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-37 and 62-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the original specification does not appear to support employing a first quantity of energy *predominantly* applied to a yolk and then a second quantity of microwave energy which is *predominantly* imparted to the albumen of the egg. The original specification does not appear to provide support for any particular degree of energy directed at either the egg yolk or albumen.

3. Claims 1-37 and 62-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The instant specification is not enabling for demonstrating the particular means used to microwave heat the yolk of an egg wherein energy is supplied predominantly to the yolk and a second quantity of energy being supplied predominantly to the albumen.

#### **Claim Rejections - 35 USC § 103**

4. Claims 1, 2, 11-22, and 62-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751.

The claims stand rejected for the reasons set forth in the last Office Action. It should be noted that the instant claims further call for providing a certain temperature for a particular time to the in-shell egg which is set forth as "cooling" same. The apparatus of WO 97/02751 is clearly capable of providing adjusting the temperature of

the heated contents whether it be for the claimed cool temperatures or the higher temperatures.

The instant claims call for the use of a quantity of energy to be predominantly directed the yolk of the egg and a second quantity of microwave energy imparted predominantly to the albumen of same. It should be noted that such recitation is broad enough to encompass a single microwave wherein same is capable of providing energy in a single dose such that the energy that is used to heat the egg white and the energy used to heat the yolk occur simultaneously and effects the yolk and white in different ways. Moreover, the microwave of WO 97/02751 has the capability of treating an egg to two or three different treatments with different temperatures.

5. Claims 3, 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Neiderer et al.

The claims stand rejected for the reasons set forth in the last Office Action.

6. Claims 4, 5, 26, 27, and 29-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with JP 2000-14269.

The claims stand rejected for the reasons set forth in the last Office Action.

7. Claims 6-8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with Van der Schoot (U.S. Patent No. 4872564).

The claims stand rejected for the reasons set forth in the last Office Action.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Anshutz.

The claims stand rejected for the reasons set forth in the last Office Action.

### **Response to Arguments**

9. Applicant's arguments filed 4/18/06 have been fully considered but they are not persuasive.

Applicant argues that Purdue (WO 97/02751) fails to teach or suggest the targeted method of using microwave energy as set forth in the instant claims. It should be noted, however, that the instant claims are all apparatus claims. The prior art need not show the actual targeting strategy as Applicant argues, but merely have the ability to be able to carry out such steps. Certainly, the microwave component of the Purdue reference has the ability to change time and energy constraints and would reasonably be expected to be able to perform the particular strategy steps set forth in the instant claims. Moreover, it should be noted that the apparatus of Purdue has the ability to pasteurize the egg by using the microwave component as well as the heat exchanger means. It should be further noted that the instant claims do not restrict the pasteurizing to occur using only the microwave system. On the contrary, instant claim 1 employs open language (i.e. comprising) wherein other additional heating components may be present in facilitating the pasteurization of the in-shell egg pasteurization system. Nevertheless, Purdue further discloses pasteurizing egg using only microwave heating means (e.g. claim 9 in Purdue).

Applicant argues that the secondary references are unrelated to microwave pasteurization. However, such references were not applied alone for their teachings regarding microwave pasteurization, but as added references to the primary to show the known use of the claimed devices employed in conjunction with the pasteurizing of the egg. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such devices as egg treatment/analysis apparatus regardless of the device used for pasteurizing the eggs.

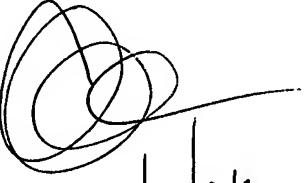
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
July 7, 2006



7/7/06

A handwritten signature of "Anthony Weier" is written in cursive above a date stamp. The date stamp is "7/7/06" with vertical lines separating the month, day, and year.